

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWEST DIVISION

UNITED STATES OF AMERICA for the  
use and benefit of CURTIS C. DAVIS d/b/a  
DAVIS CONTRACTING COMPANY,

Plaintiff,

v.

PERSONS SERVICE COMPANY, LLC;  
BYRD BROTHERS EMERGENCY  
SERVICES, LLC; AND TRAVELERS  
CASUALTY AND SURETY COMPANY  
OF AMERICA.

Defendants.

CIVIL ACTION FILE  
NO. 4:12-cv-153

### SCHEDULING/DISCOVERY PLAN

Pursuant to Rule 26(f), counsel for the parties certify that on **December 13, 2012** they conferred via telephone conference, to discuss the nature and basis of their clients' claims and defenses, the possibilities for a prompt settlement or resolution of the case, and a proposed discovery plan. After conferring, counsel for the parties have agreed upon the following:

1. The parties shall make by **January 20, 2012** Rule 26(a)(1) disclosures in the form and manner required by the rules.
2. The issues on which the parties need to conduct discovery are:
  - a. Fact discovery regarding the oral contract between Byrd Brothers Emergency Services, LLC (“Byrd”) and Curtis C. Davis d/b/a Davis Contracting Company (“Davis”), as well as other communications between Davis and the Defendants, or amongst the Defendants themselves.
  - b. Fact discovery regarding equipment and labor payments and invoices made by Byrd and Davis.

c. Document production pertaining to correspondence between the parties, documents produced incident to Davis' performance of the contract, including but not limited to project correspondence, payment records, and invoices between all parties.

3. The parties shall have until **August 30, 2013** to complete fact discovery and to file discovery motions.
4. The parties shall provide the names of expert witnesses and complete reports under Rule 26(a)(2) as follows:

**No expert witnesses are anticipated at this time by either party, but if necessary, they shall be identified by September 30, 2013, and reports shall be due by October 31, 2013.**

5. The parties shall have until **December 31, 2013** to complete discovery depositions of expert witnesses.
6. The parties shall have until **September 13, 2013**, to move to join additional parties.
7. The parties shall have until **September 13, 2013**, to move to amend pleadings to add claims or defenses, except for claims for punitive damages for which the deadline shall be **October 18, 2013**.
8. The parties shall have until **January 15, 2014**, to file other nondispositive motions (e.g., consolidation, bifurcation).
9. The parties shall have until **January 15, 2014**, to file threshold motions (e.g., jurisdiction, qualified immunity, statute of limitations). Discovery **shall** be stayed during the pendency of such motions.
10. The parties shall have until **February 7, 2014** to file other dispositive motions (summary judgment as to all or part of the case).

11. Each party shall serve no more than **25** interrogatories, including subparts. No broad contention interrogatories (i.e., List all facts supporting your claim that ...@) shall be used.
12. Each side shall take no more than **10** discovery depositions.
13. Depositions taken for presentation at trial shall be completed **60** days before trial.
14. Counsel have discussed between themselves and explored with their clients early involvement in alternative dispute resolution. The following option(s) would be appropriate in this case.

☐ **arbitration**

☐ **mediation** (choose one):

☒ private mediator

☐ court-hosted early settlement conference - should the conference be held before a judge who will not be the trial judge?

☐ yes

☐ doesn't matter

☐ **early neutral evaluation** before (choose one);

☐ judge other than trial judge

☐ neutral technical expert

☐ neutral attorney

☐ other (specify) \_\_\_\_\_

☒ none (explain reasons) The parties have had extensive settlement discussions already.

The parties shall be ready to evaluate the case for settlement purposes by **August 30, 2013**. (If an ADR option other than a court-hosted settlement conference is chosen, counsel shall designate one of themselves to report back to the magistrate judge that the ADR effort was completed and whether or not it was successful). The court reminds the parties that early involvement in ADR is voluntary, not mandatory. Participation in ADR is encouraged by the court, but is not required, except for a settlement conference shortly before trial.

15. A mid-discovery status conference would be helpful in this case. An appropriate time for the conference would be in April 2013.
16. The parties will voluntarily waive their rights to proceed before a district judge and do consent to have a magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.
17. Trial of this case will be Jury.
18. The estimated length of trial is 4 days.

Dated: 1-2-13

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Dated: 1-3-13

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**ORDER (AMENDED)**

The above scheduling/discovery plan is approved with the following additions/modifications:

1. The parties shall make by January 20, 2013, Rule 26(a)(1) disclosures in the form and manner required by the rules.

Dated this 14<sup>th</sup> day of January, 2013.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr.  
United States Magistrate Judge